

KEYWORD: Guideline E; Guideline J

DIGEST: The Board cannot consider new evidence. Adverse decision affirmed.

CASENO: 07-08765.a1

DATE: 05/21/2008

DATE: May 21, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-08765
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 19, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and

Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On February 14, 2008, after considering the record, Administrative Judge Elizabeth M. Matchinski denied Applicant's request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

We construe Applicant's appeal as raising the following issue: whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law.¹ Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a warehouse specialist for a defense contractor. He began using marijuana while in his early teens, smoking it approximately every other day. "After he turned 18 in 2001, his use of marijuana varied. Some months he used it more frequently, up to ten times, other months only about twice." Decision at 2. He stopped using marijuana in 2003. When Applicant filled out his security clearance application in December 2004 (SCA) he responded "no" to question 27, which asked if, within the previous seven years, he had illegally used any controlled substance, including marijuana.

In support of his appeal, Applicant has submitted new evidence, which the Board cannot consider. See Directive ¶ E3.1.29. Viewed in light of the record as a whole, the Judge's decision that "it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance" is sustainable. Decision at 10. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). ("The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'")

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

¹The Judge's favorable decision under SOR ¶ 1(a) is not at issue in this appeal.

Signed: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board